

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of the Proposed Lease of) DETERMINATION and
Existing Water Rights for Instream Use,) FINAL ORDER ON PROPOSED
Certificates 79985, 5324, and 14209,) INSTREAM LEASE
Jackson County)

Authority

ORS 537.348 establishes the process in which a water right holder may submit a request to lease an existing water right for instream purposes. OAR Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

Lessor

Bear Creek Orchards, Inc., A Delaware Co.
P.O. Box 9000
Medford, Oregon 97501

Lessee

Oregon Water Trust (OWT)
522 SW Fifth Avenue, Suite 825
Portland, Oregon 97204

Findings of Fact

5. On May 27, 2008, Bear Creek Orchards and the OWT filed an application to renew instream lease L-309, involving a portion of Certificates 79985 and 14209 and all of Certificate 5324. The original lease application also proposed to not to exercise temperature control under Certificates 42816, 42818, or 65102 during the term of the lease. The Department assigned the application number IL-309.

2. The portion of the first right to be leased is as follows:

Certificate: 79985 in the name of PALMER CORP. (confirmed by Rogue River State Water Board decree)

Use: DOMESTIC, LIVESTOCK, IRRIGATION OF 277.5 ACRES

Priority Date: SEPTEMBER 22, 1888

Rate: 3.47 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre

Source: ROGUE RIVER, tributary to PACIFIC OCEAN

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | GLot | Survey Coordinates |
|------|-----|-----|-----|-------|------|---|
| 36 S | 1 W | WM | 6 | NE NW | 7 | TABLE ROCK DITCH: 333 FEET SOUTH & 1987 FEET EAST FROM THE NW CORNER OF SECTION 6 |

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Authorized Place of Use:

| DOMESTIC, STOCK, AND IRRIGATION | | | | | | | |
|---------------------------------|-----|-----|-----|-----------------|------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | GLot | DLC | Acres |
| 36 S | 2 W | WM | 11 | SE NE | 12 | | 0.80 |
| 36 S | 2 W | WM | 11 | SE NE, NE SE | | 37 | 35.4 |
| 36 S | 2 W | WM | 11 | SE NE | 6 | | 22.20 |
| 36 S | 2 W | WM | 11 | SE SE | | 38 | 13.70 |
| 36 S | 2 W | WM | 12 | | | 37 | 99.7 |
| 36 S | 2 W | WM | 12 | | | 38 | 27.1 |
| 36 S | 2 W | WM | 12 | NW NE | | | 16.00 |
| 36 S | 2 W | WM | 12 | SW NE | 9 | | 19.40 |
| 36 S | 2 W | WM | 12 | SW NW | 7 | | 18.00 |
| 36 S | 2 W | WM | 12 | SE NW | 8 | | 23.20 |
| 36 S | 2 W | WM | 12 | NW SE | 10 | | 2.00 |

3. The second right to be leased is as follows:

Certificate: 5324 in the name of PALMER CORP. (perfected under Permit S-5497)

Use: IRRIGATION of 27.0 ACRES

Priority Date: JUNE 13, 1922

Rate: 0.34 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre

Source: ROGUE RIVER, tributary to PACIFIC OCEAN

Authorized Point of Diversion: None listed on certificate.

Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | Acres |
|------|-----|-----|-----|-------|-------|
| 36 S | 2 W | WM | 12 | NE NW | 20.3 |
| 36 S | 2 W | WM | 12 | SE NW | 6.7 |

4. The portion of the third right to be leased is as follows:

Certificate: 14209 in the name of FRANK L. TOUVELLE (perfected under Permit S-13413)

Use: IRRIGATION of 16.0 ACRES

Priority Date: NOVEMBER 23, 1938

Rate: 0.20 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 4.50 acre-feet per acre per year

Source: ROGUE RIVER, tributary to PACIFIC OCEAN

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | GLot |
|------|-----|-----|-----|-------|------|
| 36 S | 1 W | WM | 6 | NE NW | 7 |

Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | Acres |
|------|-----|-----|-----|-------|-------|
| 36 S | 2 W | WM | 12 | SW NE | 13.30 |
| 36 S | 2 W | WM | 12 | NW SE | 2.70 |

5. The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(1). No comments were received.

6. The instream use has been modified from the original lease application to prevent injury and enlargement and is as follows:

ROGUE RIVER tributary to PACIFIC OCEAN

Instream Reach: For Certificates 79985 and 14209 from POD (as described in Finding of Fact #2) at approximately River Mile 134 to the Gold Ray Dam at approximately River Mile 126.

For Certificate 5324 no POD is described on the certificate. Water is to be protected from the Table Rock Ditch (as described on Certificate 79985) at approximately River Mile 134 to the Gold Ray Dam at approximately River Mile 126.

| Certificate | Priority Date | Instream Rate (cfs) | Period Protected Instream |
|--------------------|----------------------|----------------------------|----------------------------------|
| 79985 | SEPTEMBER 22, 1888 | 3.47 | May 1 through October 28 |
| 5324 | JUNE 13, 1922 | 0.34 | May 1 through October 28 |
| 14209 | NOVEMBER 23, 1938 | 0.20 | May 1 through October 28 |

7. Other conditions to prevent injury and enlargement are:

Certificates 42816, 42818, and 65102 are temperature control rights and shall not be exercised during the term of the lease.

8. If approved, this instream lease is not reasonably expected to significantly affect land use as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.
9. Based upon review of the application, comments received, information provided by the Department's Watermaster, and other available information, the Department finds that the lease will not result in injury or enlargement. This finding is made through an abbreviated review recognizing that the lease may be modified or revoked under OAR 690-077-0077 if the Department later finds that the lease is causing injury to any existing water right or enlargement of the original right.
10. If a right which has been leased is later proposed to be leased again or transferred to an instream use under ORS 537.348 and OAR 690-077-0070 or OAR 690-077-0075 a new injury review shall be required. Transfers will be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380 and Division 077. Approval of this lease does not establish a precedent for approval of future leases or transfers.
11. The lease will terminate on October 31, 2008.

CONCLUSIONS OF LAW

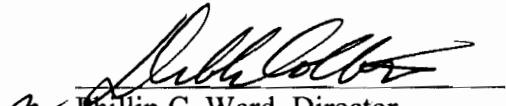
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. The former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered water rights for irrigation use, including ground water registrations during the term of the lease. Certificates 42816, 42818, and 65102 are temperature control rights and shall not be exercised during the term of the lease.
3. The lease will terminate on October 31, 2008.

Dated at Salem, Oregon this 28th day of July, 2008.


Phillip C. Ward, Director

Mailing date: AUG 01 2008